IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 98 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL JAGDISH HARIBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HN JOSHI with MR PM THAKKAR for Appellant(s) : 1,
MR AJ DESAI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 06/12/2006

ORAL JUDGMENT

The present appeal is filed against the order of conviction and sentence passed by learned Special Judge, Amreli in a prosecution instituted for the

offence punishable under the Essential Commodities Act. The learned Judge, vide order of conviction and sentence dated 31st January, 1991, on conclusion of the trial of Essential Commodities Act Case No.10 of 1985, convicted the appellant for the offence punishable under Section 7(1)(a) of the Essential Commodities Act and sentenced the accused to suffer three months' Simple Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for one month.

2. The impugned order is assailed on various grounds mentioned in para 3 of the memo of appeal and Mr. H.N. Joshi, learned counsel appearing with learned Senior counsel Mr. P.M. Thakkar has taken me through these grounds of challenge on behalf of the appellant – accused and so also the judgment.

2.1 It is argued that the finding of the lower court is erroneous and if the reasons assigned by learned Trial Judge for acquitting the other accused persons i.e. co-accused of the present appellant are considered, then the present appellant also ought to

have been given benefit and was required to be acquitted. It was satisfactorily established before the Trial Court that the business of the industry manufacturing edible oil of groundnut was a partnership business and as per the deed of partnership, each partner was equally responsible and in control of the business. The accused no.2 and 3 have attempted to get out of the criminal liability surreptitiously and the stand taken by accused no.2 and 3 could not have been used in developing reasons for recording conviction of the present appellant. To appreciate the submissions made by Mr. Joshi, firstly it would be proper for the court to state the basic facts in brief i.e. the case of the prosecution.

3. It is alleged by the prosecution that on 1st January, 1985, the revenue authorities raided the business premises of the accused persons known as Giriraj Oil Mill and during such an inquiry carried out on the spot, it was found that groundnuts worth 6300 kg, though were lying on the spot and in possession of the mill, the said stock was not

reflected in the stock register which was required to be maintained as per the relevant Control Order. It is further the say of the prosecution that 130 tins of edible oil were also lying there in the said oil mill and that stock was also not mentioned in the stock register. On demand, no formal gate pass was also produced before the Mamlatdar. One serious allegation made against the accused was that the present appellant - accused was present when the premises of oil mill was raided and, therefore, a formal seizure of 130 oil tins was made alongwith the groundnuts but the entire stock was entrusted to the present appellant - accused. However, it was found that the accused had disposed off all 130 edible oil tins and thereby they have committed the offence punishable under Section 7(1)(a) of Essential Commodities Act (hereinafter referred to as 'the Act') by committing breach of Clause 23, 26(6) and 16 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 read with Section 3(2)(I) of the Act.

4. Both learned APP Mr. Desai and learned counsel

Mr. Joshi have taken me through the oral as well as documentary evidence led during the course of trial. It is submitted that all the oil tins were not kept illegally. Some proceedings were going on with the State and the Civil Supplies Department and in the appeal with the Department, the highest officer of the State authorities, who dealt with the appeal preferred against the scheme of Section 6 of the Act, had found that the stock of groundnut of 6,300 kg requires to be released and the said stock was released. Of course, this very appellate authority had confirmed the order of confiscation passed by the Collector. So, the State, on account of confirmation of the confiscation order, was the owner or was entitled to dispose off all 130 edible oil tins. On careful reading of the evidence as well the reasons assigned by the learned Trial Judge, it emerges that the learned Trial Judge has rightly appreciated the oral as well as documentary evidence including the facts that have come on record during the course of cross-examination of witnesses examined during the course of trial.

4.1 It is true that the State has not preferred any appeal against the order of acquittal recorded by the learned Trial Judge, so far as accused no.2 and 3 are concerned. It is in evidence that the oil mill is located in a land owned by the family of the appellant - accused and while explaining the incriminating evidence put to the notice of the accused under Section 313 of CrPC, the appellant - accused has admitted certain important aspects. Written explanation given by the appellant – accused, which is at page 191 of the paper-book, is found unreasonable and certain improbabilities have been stated in his explanation (refer para 4, 5 and 6 at page 192). The appellant - accused has tried to impress upon the Trial Court that he is innocent. As he was to marry on 28th January, 1985, he had left the mill premises which is situated at Kunkava Taluka of District Amreli on 12th January, 1985 and had reached his native village Jangar. The entire business was entrusted alongwith the stock of groundnut and the edible oil etc. to other partners Babubhai and Gordhanbhai and he came to know for the first time on 29th January, 1985 that these two partners have

illegally sold the seized edible oil tins even without intimating him or seeking his permission. It is admitted by the appellant that the oil tins seized by the Collector and entrusted to him have been sold without formal permission from the Collector and without tendering any bank guarantee to the Collector equal to the value of the tins.

4.2 On one hand, it is the say of the accused that he was 19 years of age when the premises were raided and on the other hand, he says that he was to marry on 28th January, 1985. Unless it is otherwise proved, it is possible to infer that the appellant must have crossed the age of 21. Only then, he can marry unless he was to marry in violation of the relevant law whereby the marriageable age is fixed by a Statute. At one place, from the documents produced, it has emerged that the age of the accused was 22 years at the relevant point of time. Even the age of the accused in the statement recorded by the court is shown to be 22. So, he has mentioned the incorrect age while giving written explanation to the court under Section 313 of CrPC. On one hand, he says that

he was to marry on 28th January, 1985 but had come to the business place on 29th i.e. on the very next day. No evidence as to the arranged marriage was brought before the Trial Court. At least an invitation card could have been produced by the accused to show that his marriage was fixed on 28th January, 1985. There is no convincing evidence on record to show that he had left the mill premises on 12th January, 1985 and bare word of the accused was rightly not found acceptable by the learned Trial Judge.

4.3 It is admitted by the accused that the oil industry is located in the premises owned by his father Hiralal Mohanlal and accused no.2 and 3 were taken as partners. When the mill premises were raided, he was at Kunkava and was sitting in one neighbouring industry i.e. Cotton spinning factory of p.w. Parsottam Madha and he was called from there. This Parsottam Madha had accompanied him. Of course, it was the say of the accused before the Trial Court that he had simply signed the papers prepared by the officers of the Civil Supplies Department. It is satisfactorily established that the appellant -

accused was an active partner and was visiting the mill premises everyday and all the 130 tins were entrusted to him. One important document – panchnama (Exh.17) has also been proved by the witnesses namely, panch witnesses. The learned Trial Judge has rightly read the contents of the panchnama (Exh.17). This appellant – accused himself has not accepted that the other two partners were present at the time when the mill premises were raided. So the totality of the evidence has been considered by the learned Trial Judge and in my view, the evidence is rightly appreciated and there is no error or patent illegality in appreciating the evidence. There was no reason for the learned Trial Judge to discard the documentary evidence produced by the prosecution witnesses examined from the Civil Supplies Department. The act of selling 130 oil tins by the other two partners, as alleged by the accused no.1, was not found acceptable by the Trial Court and I am in agreement with this finding because the present appellant was entrusted all 130 tins.

4.4 If any breach of trust was made by the other two

partners, the appellant could have lodged a criminal complaint against both of them. In response to a query raised by the court, Mr. Joshi has fairly accepted that no complaint was even submitted to the Collector immediately on 29th January, 1985. Of course, the accused had intimated this fact to the Collector on 2nd February, 1985 while making written representation (Exh.34) but it appears that in response to the correspondence referred to in the document of 2nd February, 1985, allegations were made against the other two partners by the appellant. It is clear from the evidence that on 16th January, 1985, the accused was served with a registered notice (Exh.31) by the District Civil Supply Officer and he was asked to explain that under which circumstance, without tendering bank guarantee, he has disposed off the seized oil tins and he should also show cause as to why a criminal prosecution should not be instituted. In response to this notice of 16th January, 1985, at a belated stage on 2nd February, 1985, the accused tried to shift the burden on the shoulders of his two partners under the pretense of his alleged marriage on 28th January, 1985. A notice

dated 16th January, 1985 containing a serious impeachment could have been responded to immediately and much prior to the alleged date of his marriage. So it is clear that the present appellant was the person responsible for selling off the seized edible oil tins in violation of prohibitory directions given by the State authority. This conduct of the accused is nothing but a challenge to the State administration and the machinery established to regulate and control the essential commodities within the State of Gujarat. For this wrong, the accused could have given the most convincing reasons and in absence of any possible explanation or cogent evidence, the court obviously would have recorded that the act of the appellant – accused is a criminal wrong and not a wrong which could have been resolved by the revenue authorities. A confiscated material can be sold by the person who is entrusted the stock but for that the competent authority of the State should grant express permission. The fact remains that neither express nor implied permission was pointed out to the Trial Court for selling all 130 seized and confiscated tins of edible oil.

5. I am not convinced with the submission made by Mr. Joshi that this is an irregularity only of not maintaining registers or books of accounts which a dealer or manufacturer is supposed to maintain under the relevant Control Order of 1981. There is no force in the argument of Mr. Joshi that the appellant – accused is entitled for acquittal on the ground of parity because the case of the present appellant is materially different than the case of other two partners. Merely because other two partners also could have been convicted would not make him entitle for acquittal because direct evidence of cogent nature is there on record against the present appellant.

6. Of course, there is some force in the argument of Mr. Joshi that at the time of the offence, the accused was a young man of 20-22 years of age. He was busy with his obligations as he was to marry on 28th January, 1985 and, therefore, the court below could have taken a very lenient view. It is clear from the order that the learned Judge has imposed

minimum punishment prescribed. So, it is difficult for this court to say that the court has taken any strict view otherwise the Trial Judge could have imposed fine of a much higher amount than the value of 130 tins sold by the appellant. It is inferable that the accused – appellant must have pocketed the amount of consideration of 130 tins confiscated to the State. This court cannot enhance the amount of fine as there is no appeal for enhancement of punishment under Section 377 of CrPC. The alternative submission of Mr. Joshi is that this court, on a special reason, may reduce the quantum of substantive sentence by increasing the amount of fine. Ultimately, today, the State of Gujarat is not facing any crisis of edible oil, since some years. Therefore, whether this court should send the accused – appellant in jail after lapse of more than 21 years, if the date of offence is considered and after about more than 15 years, if the date of order of conviction is considered, is a question posed by Mr. Joshi before the court. During the course of hearing, the appellant – accused was present and a pointed question was asked to Mr. Joshi as to whether

the appellant – accused is ready to pay a fine of Rs.5 lakhs and if so, then the court can reduce the substantive punishment for a day otherwise a person who is responsible for an offence punishable under the Essential Commodities Act and has acted in a manner which can be said to be a challenge to the State machinery cannot expect any leniency from the court even on the ground of mercy. The closure of business and the fact that the appellant – accused at present is living a life of an agriculturist only would not help the accused. It is very likely that considering the strict administration of the State, he might have stopped business of the style in which he was running his edible oil mill in those years. Mr. Joshi has informed the court that the accused, if asked to pay a fine of Rs. 2 lakhs, can arrange for the amount in a week or so and he should be given some time to arrange for the amount of fine and to surrender to serve the sentence that may be imposed by the court.

7. It is observed by the Apex Court that no punishment lesser than the minimum prescribed can be

imposed and should be imposed merely because the trial or the hearing of the appeal against the finding recorded by the learned Trial Court remained pending for a long period. Ultimately, the accused was enjoying bail all throughout this period and he was aware about the sword of uncertainty hanging on account of pendency of the criminal appeal preferred by him. On careful reading of the scheme of Section 7 of the Act, it is clear that once the legislation had thought to leave the quantum of punishment on the discretion of the court conducting trial, and, therefore, only a proviso was enacted whereby the court was authorised to impose any adequate punishment on special reasons that may be mentioned in the judgment for the term of less than three months i.e. minimum period prescribed, but the proviso was omitted by Act 18 of 1981 for five years but by subsequent amendments, it stood omitted for 15 years. So, it is possible for Mr. Joshi to argue that now the court should read the proviso and can award sentence of imprisonment for a term of less than three months. The date of offence is of the month of January, 1985. Of course, formal complaint

came to be filed in the month of April, 1985 but the trial concluded on 31st January, 1991. Now, the appeal is being heard in the month of December, 2006. So more than 15 years have passed from the relevant amending Act of 1981. So, the proviso can be read as part of Section 7 of the Act but the crucial question would be whether this re-entry of proviso in Section 7 immediately after sub-section (2) can be given a retrospective effect. Unless specifically provided, the law has a prospective effect. Merely because the appeal could not be heard for long i.e. for 15 years from the amended Act, the present appellant cannot be put to any advantageous position than all the persons whose appeals have been heard and decided by the court. So without entering into any debate in this regard, the court is not inclined to alter the period of punishment imposed by the Trial Court even by enhancing the amount of fine. So this is not a case where the court could have altered the punishment from three months to one day and by increasing the amount of fine to Rs.5 lakhs saying that the criminal appeal should be treated as continuation of trial, because that also would have the effect of giving a

retrospective effect of the proviso i.e. the punitive provision. So, at the relevant point of time when the offence was committed by the appellant – accused, the proviso cannot be said to be in existence. The court, therefore, is not inclined to show any leniency to the accused – appellant because it is not legally possible for the court to impose punishment less than the minimum prescribed. The accused is also not found worthy of benefit under Section 360 of CrPC because his conduct is not only found criminal but a conduct challenging the State regulated machinery whereby he has sold the property of the Government entrusted to him unauthorisedly. Such a person should not be given advantage of thought of a reformatory school.

8. In short, there is no merit in the appeal, and, therefore, the same is dismissed. The order of conviction dated 31st January, 1991 passed by learned Judge, Special Court, Amreli in Essential Commodities Act Case No.10 of 1985 stands confirmed.

9. The accused is given six weeks' time to surrender failing which the Trial Court shall issue non-bailable

warrant for his arrest so that the accused can be sent to jail to serve the substantive sentence. Bail bond executed pending appeal stands cancelled.

(C.K. Buch, J.)

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